

APPROVED 11/19/03

TOWN OF WESTFORD

ZONING BOARD OF APPEALS

MINUTES

DATE: July 23, 2003

TIME: 6:30 P.M.

PLACE: Westford Academy Lecture Hall

PRESENT: Ron Johnson, Jay Enis-*arrived at 7:00 p.m.*, Roger Hall,
Jim Kazeniac, Bob Herrmann

ABSENT: Sam Frank, Dave Earl

OTHERS

PRESENT: Jennifer Burke-Permitting Office Manager
Norman Khumalo-Assistant Town Manager
James Arsenault-Town Engineer
Elaine Lucas-Town Counsel, Audience Members

VARIANCE - 126 N. MAIN STREET

Seeking a Variance from Section 3.6 Non-conforming Uses and Structures and Appendix C Table of Dimensional and Density Regulations to allow the construction of a farmer's porch within the front yard setback in a Residential A district, Assessor's Map 24, Parcel 20, James M. Joncas

James Joncas, petitioner, was present seeking a Variance to construct a 5'6" farmer's porch. The front of the porch will be approximately 30 feet from the edge of N. Main Street. Joncas stated that the porch will be an extension out from the house in line with the existing roof line. Herrmann pointed out that the mortgage inspection plan dated June 3, 1988 showed the house to be 27 feet from the road. The Board requested Joncas provide a drawing showing what the front of the house will look like with the addition. Joncas agreed to

continue the public hearing to August 20, 2003. There was no input from the floor. It was moved by Herrmann, seconded by Hall, and VOTED 4 IN FAVOR WITH 3 ABSENT (Frank, Earl, Enis), to continue the public hearing to August 20, 2003.

VARIANCE – 30 LOWELL ROAD

Seeking a Variance from Appendix C Table of Dimensional and Density Regulations to allow the removal of an existing 24'x21' garage and the construction of a 32'x30' barn in the same location within the front yard setback in a Residential A district, Assessor's Map 32, Parcel 15, Michael Boyle

Michael Boyle, petitioner, was present seeking a Variance to remove an existing 24' x 21' garage and construct a 32' x 30' barn in the same location. Boyle showed a plot plan of the site. The barn will be approximately 38 feet from Lowell Road and 40 feet from Meadowview Lane. Boyle did not have a drawing of the proposed structure. The Board asked Boyle to provide a drawing of the proposed structure showing elevation and dimensions in order for the Board to make an informed decision. Johnson suggested that Boyle also have a surveyor stake out the barn and the lot lines accurately. Boyle agreed to continue the public hearing to September 17, 2003. There was no input from the floor. It was moved by Herrmann, seconded by Kazeniac, and VOTED 4 IN FAVOR WITH 3 ABSENT (Frank, Earl, Enis), to continue the public hearing to September 17, 2003.

VARIANCE – 3 MARK VINCENT DRIVE

Seeking a Variance from Appendix C Table of Dimensional and Density Regulations to allow the construction of a garage and breezeway within the front yard setback in a Residential A district, Assessor's Map 13, Parcel 113, Hilary L. Taylor

Hilary L. Taylor, petitioner, was present seeking a Variance to construct a garage and breezeway. The construction of the garage and breezeway will reduce the setback from 50 feet to 35 feet. Taylor submitted letters of support from Bill Turner, Conservation Administrator, and three of her neighbors. Taylor and her Architect reviewed the architectural plans with the Board. The location of the garage is driven by the location of the wetlands, swimming pool and leaching field. There was no input from the floor. It was moved by Herrmann, seconded by Kazeniac, and VOTED 4 IN FAVOR WITH 2 ABSENT (Frank, Earl) and 1 ABSTAINING (Enis), to close the public hearing. It was moved by Herrmann, seconded by Kazeniac, and VOTED 4 IN FAVOR WITH 2 ABSENT (Frank, Earl) and 1 ABSTAINING (Enis), to approve the Variance request which will reduce the front yard setback to no less than 34 feet per the plans that are on file.

MINUTES

APRIL 23, 2003 – It was moved by Hall, seconded by Herrmann, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to approve the minutes of April 23, 2003.

MAY 5, 2003 – It was moved by Herrmann, seconded by Johnson, and VOTED 2 IN FAVOR WITH 3 ABSTAINING (Enis, Kazeniac, Hall) and 2 ABSENT (Frank, Earl), to approve the minutes of May 5, 2003 as submitted.

MAY 21, 2003 – It was moved by Herrmann, seconded by Hall, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to approve the minutes of May 21, 2003 as submitted.

MAY 28, 2003 – It was moved by Herrmann, seconded by Hall, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to approve the minutes of May 28, 2003.

JUNE 17, 2003 – It was moved by Hall, seconded by Enis, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to approve the minutes of June 17, 2003.

JUNE 18, 2003 – It was moved by Herrmann, seconded by Hall, and VOTED 3 IN FAVOR WITH 2 ABSTAINING (Johnson, Enis), and 2 ABSENT (Frank, Earl), to approve the minutes of June 18, 2003 as submitted.

JUNE 25, 2003 – It was moved by Hall, seconded by Enis, and VOTED 4 IN FAVOR WITH 1 ABSTAINING (Herrmann) and 2 ABSENT (Frank, Earl), to approve the minutes of June 25, 2003.

CORRESPONDENCE

Letter from Groton Road residents dated July 14, 2003 re: Ranchos. Johnson referenced the letter from the Groton Road residents and to be placed in the correspondence file.

Letter from Chairman of the Board of Selectmen dated July 11, 2003 – Advising the Zoning Board that the Keyes Corner Local Initiative Program has been approved.

99 MAIN STREET – COMPREHENSIVE PERMIT – ROSEGATE AT WESTFORD

Pro Forma Review by Julie O'Connor, Consultant – O'Connor provided an analysis, dated July 21, 2003, of the developer's pro forma based upon information from the following review: Pages 4 and 5 from the Housing Starts application, which show the preliminary construction budget and the unit mix; seven pages of site plans and site detail; copy of the comprehensive permit

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application with exhibits, except for Exhibit G which was missing; and letter and Rosegate profit analysis done by Sam Frank.

Attorney Douglas Deschenes responded to the pro forma analysis.

Acquisition Cost: Deschenes clarified that they showed an acquisition cost of \$500,000 which included the expected carrying costs and demolition costs. The actual

carrying cost to date has been just under \$48,000. Deschenes pointed out that there will be another 1½ to 2 years of carrying costs.

Site Preparation: Deschenes stated that the site preparation costs were based on estimates at the time but based on the engineering changes that have been done and the requested changes by Howe Surveying as part of the drainage changes, etc., that number is not really off.

Landscaping: Deschenes indicated that the developer plans to spend the upper range on the landscaping as provided in the pro forma.

Residential Construction: Deschenes stated that the \$25,000 square feet includes two types of development, the finished areas and the basement garage areas. Deschenes estimated \$72.00 per square foot for the finished areas whereas the basement/garage areas were estimated at \$30.00, which averages out to the \$58.00 mentioned by O'Connor.

Construction Loan Interest: Deschenes stated that it appears at this point that the developer will not be using Mass Housing but rather commercial financing which is slighter higher. The developer is currently looking at a 6% rate. Deschenes stated that the developer cannot close out the construction loan until all of the units are sold which could be a 2-2½ year cycle at 6% as opposed to 1½ at 5%.

Application Fees: Deschenes hoped to see a waiver of the fees.

Marketing: Deschenes stated that the marketing number was based on the fact that the developer had potentially 4-5 units spoken for which would not require marketing. Those units were going to be sold without marketing so four of the units were not included in the marketing commission. Deschenes stated that those units are not solid any longer so the marketing may turn out to be slightly higher.

Affordable Sale Prices: Deschenes agreed with methodology used. Deschenes stated that they used the range of \$150,000-\$170,000 in the application because the actual price is based on the then-current interest rate and the then-current tax rate.

Market Sales Prices: Deschenes stated that the units vary in size from 1,300 sq. ft. to 2,700 sq. ft. The prices were based on marketing research.

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Deschenes felt that their numbers were accurate and that when comparing the pro forma and O'Connor's analysis the two were very close. Deschenes reminded the Board that this is a Mass Housing project and that Mass Housing has their own review of the pro forma.

O'Connor referenced the Rosegate Profit Analysis provided by Sam Frank which listed each unit with a sales price for each unit. O'Connor stated that Frank's analysis had four single-floor units in the center of the building with three of the units being affordable and one being the lowest market rate unit at \$229,900. O'Connor suggested that if you take out that one unit which is smaller, the other units still range from \$254,900 (2,300 s.f.) to \$369,900 (2,660 s.f.). O'Connor felt that there was not much difference between those square footages for over \$100,000 in price. O'Connor

questioned whether a buyer would pay over \$100,000 more for less than 400 more square feet. O'Connor stated that it was Mass Housing's policy in the past that the affordable units are supposed to be indistinguishable from the outside from the market rate units. O'Connor questioned how the affordable units could be clustered together, based upon the site plan, and keep them indistinguishable from the market rate units. Lucas noted that most 40B projects have the affordable units scattered throughout the development. Deschenes stated that the form provided by Sam Frank was wrong. Deschenes stated that they did not produce the form nor did they know the origin of it. Robert Walker, developer, clarified that as provided in the application there is one affordable unit in the flats, one two-bedroom townhouse affordable unit, and one three-bedroom townhouse affordable unit. O'Connor wanted to see the developer's accounting of the sales prices for each unit and how much they are going to make on the market sales.

Herrmann asked Deschenes why the developer is not using Mass Housing for funding. Deschenes stated that there is no guarantee that the money is there for Mass Housing and that there is a great deal of additional administrative work associated with that money. Deschenes stated that there is a slight difference in the interest rate between commercial and Mass Housing but that the commercial money is available. The Board and Deschenes discussed funding through Mass Housing versus commercial funding and the requirements under Chapter 40B.

Public Input re: Pro Forma Review

Dennis Keris, 100 Main Street, stated that he heard from the presentation this evening that when the project was initiated the developer felt that he had five of the units spoken for. Keris stated that it now sounds like from the attorney's (Deschenes) presentation it that it is not set any longer. Keris asked if that affects the developer's ability to follow through with the project. Deschenes stated that the developer is still comfortable that there will be tremendous demand as the telephone calls that they are getting indicates. Deschenes stated that the marketing costs may go up slightly if they have to pay marketing for all twelve units.

Barry Foster, 20 Leland Road, asked if the twelve units was the "break even" point. Johnson stated that the reason for the pro forma was to determine if the developer was making the profit limit of 20%. Johnson stated that they were looking at a floor of 10% and that O'Connor was reviewing the pro forma to see if the numbers presented fit into that slot. The pro forma does not address the issue if the developer builds fewer units he would have less profit. The pro forma analyzes the project as it was presented.

Deschenes outlined the information provided to the Board regarding the economic analysis and impacts to the site relative to 150 gallons per day versus 110 gallons per day septic system.

Ken Morgan, 4 Dutchman Lane, asked what review the consultant will give to the information provided by the applicant regarding the 150 gallons versus 110 gallons. Johnson stated that the Board will review the information to determine if it is realistic. Morgan asked if the consultant reviewed this information with the same level of detail as the pro forma. Johnson stated that the 150 gallons versus 110 gallons was not reviewed

at the same level of detail as the pro forma. Morgan felt that some kind of review was required of the estimated amounts.

Johnson stated that he would speak to Frank regarding the market rate information pertaining to the pro forma and will provide those numbers to O'Connor.

Review of Letter from Don Parsons, Fire Prevention Officer, regarding Gas Tank Removal and Access – Johnson read into the record a letter dated July 16, 2003 from Don Parsons, Fire Prevention Officer, with an attached copy of a Tank Removal Permit, stating the tank was removed on May 10, 1993; and information regarding the issue of access. Burke reported that Parsons had concurred that a 4 ft. wide access around the side of the building is acceptable to him and that he did not see the need for anything additional. Burke to clarify with Parsons regarding his suggestion that the septic tanks to the front of the building be identified as to their location.

Sandra Martinez, 95 Main Street, asked if there was a reason why the gas tank was removed. Johnson stated that the paperwork does not indicate contamination or the reason it was removed. Herrmann stated that through personal experience, any tank 10,000 gallons or less had to be removed by 1993. The only oversight required at that time was a visual inspection by the Fire Chief and if he determined that there were no leaks, etc., that was all that was required by law. Herrmann stated that unless the Fire Chief saw some kind of leak, they were not required to do groundwater investigations.

Review of Letter from Building Commissioner regarding Height of Building – Johnson read into the record a letter from the Building Commissioner dated July 15, 2003 stating that the building complies with the height regulation bylaw.

Burke reported that the Board of Selectmen, Board of Health and Conservation Commission have not responded to the Board's request for input regarding the requested waivers. Burke further reported that the Board of Health had responded to some of the waiver requests and are meeting tonight to discuss the other waivers. Johnson asked that another letter be sent to the Board of Health, Board of Selectmen and Conservation Commission asking for input regarding the requested waivers.

Dennis Keris, 100 Main Street, stated that he was present at the July 9th Conservation Commission meeting at which time Eric Fahle, Conservation Chairman, suggested using Clean Harbors to remove the drum, shed and any other visible things on that property and charge it to Clean Harbors. The developer was not to remove any items from the property. Keris stated that Fahle was concerned with contamination and/or any kind of waste that seeps into nearby wetlands. Keris stated that the Conservation Commission is concerned that the property is clear of dangerous substances. Keris wanted to know who took the drum away. Burke stated that it is private property and that the Town has no issue with that. Burke stated that the Conservation Commission should address that issue if they have a concern. Khumalo reported that he visited the site with Bill Turner, Conservation Administrator, approximately three weeks ago. Deschenes stated that Turner did not find any signs of sludge or evidence of spills or toxic materials. Khumalo stated that Turner noted traces of some kind of black substance along the river bed but that he was going to check with Fahle for confirmation

as to whether that was an issue for the Conservation Commission to follow up on. Walker stated that on July 9th that was brought up as an issue. Johnson to follow up with Turner regarding the status of this matter.

Review of Letter from Attorney Deschenes dated July 15, 2003 – Johnson read the letter into the record. The letter addressed pro formas, waiver request, operation and maintenance plan, condominium documents, isometric elevation drawings, Fire Department letter, and enviro-screen. Johnson requested the applicant to reconsider providing isometric elevation drawings or get some indication as to why providing the drawings is uneconomic. Johnson felt that an enviro-screen should be completed for the site. Kazeniac suggested that Burke communicate with the Board of Health regarding the enviro-screen issue. Johnson read the list of waiver requests.

Letter from Howe Surveying dated July 22, 2003 – Johnson indicated that there are no outstanding issues between the Town's engineers and the developer's engineers.

New or Unaddressed Abutter Concerns

Dennis Keris, 100 Main Street, assuming the development is going to occur he requested that adequate protection be given to the wetlands across the street, i.e., the vernal pool. Keris stated that the development is infringing on the buffer zones that Conservation has talked about at the back. Keris asked that

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everything be taken care of very carefully in site excavation and site development. Keris asked how the vegetation will be replaced that will be removed during construction. Keris asked that the replaced vegetation be of similar aesthetic natural kind of look. Keris asked that the plantings are of a mature type of planting in terms of providing more of a natural look to what the property might have now. Keris was concerned with the Lil' Peach side of the property and the elimination of vegetation. Keris asked that the area be re-vegetated to buffer light and noise. Keris was concerned with the weight of heavy equipment coming onto the site and the possible impacts to Main Street and the drainage running under Main Street. Keris stated that heavy equipment usually does not travel along Main Street. Johnson stated that the Board can look into that issue with the Highway Department. Arsenaault indicated that he would speak to the Highway Superintendent and report back to the Board.

Sandra Martinez, 95 Main Street, stated that if the waiver for the driveway is approved the driveway will be 5 feet from her property line and that all the headlights will be shining into her property. Martinez was concerned with adequate screening and snow removal. Martinez reiterated her request for the developer to post a \$500,000 bond for a period of ten years to reimburse the Town and any abutters for any losses incurred due to the impact of the proposed development on the water table and the septic systems located within 1,500 feet of the discharge area for the proposed development. Martinez felt that it was not fair to have her property devalued if there is an impact from the development. Johnson stated that typically developers are required to post bonds but the bonds are released once the construction has met the requirements of the Planning Board. Johnson did not know of any legal basis to require the developer to post a \$500,000 bond. Lucas stated that the Zoning Board cannot impose conditions on an affordable housing development that would not ordinarily be imposed on similar developments that are not affordable. Johnson stated that the Board would follow up with Town Counsel to see if there is a mechanism to require bonding.

Johnson listed the following outstanding items: Staff to notify the various town departments that if they have not responded to the Board by the next meeting, this matter cannot be continued indefinitely; the Board to provide additional marketing information to O'Connor and ask that she come back to the Board; Johnson to determine from the Highway Department the traffic impacts on Main Street; and Staff to provide the landscaping plan to Sandra Martinez. Lucas suggested that Martinez review the landscaping plan and if she feels additional screening is needed she should notify the Board as soon as possible.

Deschenes stated that he was disappointed that the other town boards have not responded to the Zoning Board and that his client is bearing the brunt of that by having to continue the public hearing when the boards have had every opportunity to provide input. Deschenes stated that the developer has provided everything that was asked for. Deschenes stated that there is no further information needed from the developer. Deschenes asked that the

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Board close the public hearing with the provision that Board would accept common letters from the other boards if they are received. Lucas pointed out that once the Board closes the public hearing there is a limited amount of time in which to make a decision. Lucas felt that it was wise to wait until all the facts are received and discussed in open meetings. Deschenes asked that the other boards provide the input well in advance of the next meeting. The Board concurred. Staff will ask the boards for input no later than August 14th.

Motion to Continue: It was moved by Kazeniak, seconded by Herrmann, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to continue the public hearing to August 20, 2003.

137 CONCORD ROAD, COMPREHENSIVE PERMIT, CONCORD PLACE, LLC

Johnson reported that he, Roger Hall, Burke and Khumalo met with the applicants on Tuesday morning, July 22, 2003, regarding revised conceptual plans. Attorney Douglas Deschenes was present representing the applicant. Deschenes reminded the Board that this project was filed some time ago and that two public hearings had occurred. Deschenes stated that a great deal of feedback was received from the Board and the neighbors at that time. Deschenes stated that after reviewing the input it was concluded that the project needed some revisions. Deschenes provided an overview of some conceptual plans. Deschenes stated that the conceptual plans have not been submitted as revised plans for the project or the definite architectural layout of the buildings. Deschenes stated that after getting input from tonight's meeting the developer will submit revised site plans and architectural plans which will then be forwarded for peer review. Deschenes addressed the prior site plan of 12 units in 3 groupings. Deschenes stated that there were a number of questions raised regarding those plans, i.e., impacts to the neighborhood character, impacts to the neighbor to the north, privacy issues, massing and scaling issues, etc. Deschenes outlined the site constraints. The conceptual plan showed movement of the buildings, garages in the back, grade changes, and significant landscaping areas to alleviate the view from Concord Road. Deschenes

outlined the conceptual architectural plans. Deschenes anticipated that every side of the front building will be less than 35 feet high.

Herrmann wanted to know the difference between the height of the proposed building and a large single-family home. Deschenes to provide. Herrmann was concerned with the massing of the buildings.

Johnson and Herrmann indicated that the conceptual plans were going in a better direction. Hall asked the developer to look at a decrease in the density of this project.

Abutter Questions/Comments

Gordon Stevenson, 134 Concord Road, noted that the original plan proposed a loft area. Stevenson asked if the loft area was proposed in the conceptual plan. The developer indicated that they have not determined whether the loft will be part of the plans as yet. Stevenson was concerned with density issues. Stevenson asked if the public safety access issue around the buildings would be addressed. Johnson stated that all the same issues as the other Chapter 40B project will be addressed. Deschenes outlined the public safety access.

Ken Morgan, 4 Dutchman Lane, asked if the Board was ready to review the pro forma for this project. Deschenes stated that they will have to develop a new pro forma in accordance with the new site plan and new design. Morgan asked what the developer's timetable was for this project. Deschenes estimated that new plans could be ready within one month and then be forwarded out for peer review. Deschenes estimated that peer review would be discussed some time in October. Johnson stated that the timetable would be the same as the Rosegate project.

Paul Berry, 138 Concord Road, asked how much frontage the site had and how much area the house would take up along Concord Road. Deschenes stated that there was 116 feet of frontage along Concord Road and that the house would take up 76 feet. Deschenes stated that the developer intends to leave the stonewalls along the right-of-way. Berry felt that a fire truck would not be able to make a right turn into Elliot Road. Berry asked for information regarding proposed slip ramps at Route 495. Khumalo stated that there are no plans for slip ramps at this time.

Scott Hraba, 5 May Road, asked for the parking size of the recreational area. Deschenes approximated the parking area at 60'x80'. Hraba recalled that the Police Chief suggested sidewalks be installed along Concord Road. Johnson stated that the Board will follow up on that suggestion with the Police Chief. Hraba noted that Concord Road is a heavily traveled roadway. Hraba was concerned with the safety of children.

A resident from 137 Concord Road was concerned that two buildings will be five feet from her property and will look into her back yard and bedrooms. The resident was concerned that her privacy will be impacted and that her well could be contaminated by

the parking lot drainage. Deschenes stated that all the drainage from the parking lot will be controlled.

Allan Hicks, 130 Concord Road, asked where the septic tank and leaching field would be located on the conceptual plan. Deschenes stated that the septic tank and leaching field will be in the same location as the original plan. The developer's engineers are checking to determine whether there are any other wells in the proximity of the septic/leaching areas. The size of the septic system will be designed in accordance with the specific plans.

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Johnson asked the abutters to provide comments in writing to Burke relative to the conceptual plans within the next week.

Motion to Continue: It was moved by Herrmann, seconded by Kazeniac, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to continue the public hearing to August 20, 2003.

NEW BUSINESS

Johnson suggested that the Board hold an organizational meeting in September with Staff and Town Counsel to discuss the concept of Variances, Special Permits, and Use Variances and how the Board handles those issues.

ADJOURNMENT

It was moved by Herrmann, seconded by Kazeniac, and VOTED 5 IN FAVOR WITH 2 ABSENT (Frank, Earl), to adjourn the meeting.

Submitted by Beth Kinney, Recording Secretary